IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO.629 AND 630 OF 2003

WRIT PETITION NO.629 OF 2003

Auduth Timblo,
Residing at La Marvel Colony,
Dona Paula, Panaji, Goa. .... Petitioner.

V/s.

1. Shivram V. Narvekar,
residing at Bombi Sadan,
Near Hotel Woodlands,
Margao, Goa.

2. Mahadev V. Narvekar,
residing at Bombi Sadan,
Near Hotel Woodlands,
Margao, Goa. .... Respondents.

Mr. M.S. Usgaonkar, Sr. Advocate with Ms. Priyanka Kamat, Advocate for the petitioner.

Mr. M.S. Sonak, with Ms. Pooja Bharne, Advocates for the respondents.

WRIT PETITION NO. 630 OF 2003

Auduth Timblo,
Residing at La Marvel Colony,
Dona Paula, Panaji, Goa. .... Petitioner.

V/s.

1. Shripad D. Narvekar,
residing at 51, 52 Om Pushpak,
III wing, Khadpaband, Ponda, Goa.

2. Motiram Narayan Narvekar,
293, Agarkar Road,
Tilakwadi, Belgaum,

3. Sitaram Vishwanath Narvekar,
Bombi Sadan,
Near Hotel Woodlands,
Margao, Goa.

4. Atmaram alias Kishore
Venktesh Nevgi,
Belsole Apartments, Bldg. "B"
Near Pandav Chapel, Aquem – Alto,
Margao – Goa. .... Respondents.

Mr. M.S. Usgaonkar, Sr. Advocate with Mr. Sudesh M.S. Usgaonkar, Advocate for the petitioner.

Mr. V.B. Nadkarni, Sr. Advocate with Mr. Y.V. Nadkarni, Advocate for the respondents.

CORAM : N.N. MHATRE, J.

DATE : JANUARY 15, 2004.

P.C. :

In both these petitions, the petitioner challenges the order passed by the Civil Judge, Sr. Division, Margao, rejecting the preliminary objection raised by the petitioner that he could not be considered as a Judgment Debtor in the execution proceedings.

2. The petitioner contends that the consent terms which were filed by the parties in Special Civil Suit No.157/1982 before the Civil Judge, Sr. Division, Margao on 20.4.2000 did not bind him as he was not a party to the consent terms. It is, therefore, submitted that since he was not a party to the consent terms, he could not be a Judgment Debtor and, therefore, the execution application filed against him ought to be rejected. The respondents in both the petitions were the plaintiffs in the suit filed before the trial Court. Under the consent terms, certain amounts were to be paid in accordance with Clauses 5 and 8 of the consent terms and the petitioner was liable to make payment in

accordance with the Clauses 5 and 8 of the consent terms. A declaration to that effect was executed by the petitioner on 22.3.2000. This declaration thus formed part of the consent terms. The said civil suit was decreed in terms of the consent terms and the declaration which became part of the decree.

3. As the payments were not made in accordance with the Clauses 5 and 8 of the consent terms by the petitioner, the Decree Holders filed execution proceedings against the Judgment Debtor by filing Special Execution Application No.18/2002 and Special Execution Application No.23/2002. Writ Petition No.629 of 2003 has been filed by the petitioner against the Decree Holders in Special Execution Application No.23/2002 and Writ Petition No.630 of 2003 has been filed against the Judgment Debtor in Special Execution Application No.18/2002.

4. Mr. Usgaonkar for the petitioner submits that the executing Court erred in dismissing the preliminary objection raised by the petitioner in the execution proceedings. He submits that the petitioner had merely given a declaration on 22.3.2000 which cannot constitute an undertaking to the Court, nor does the petitioner fit into the category of 'surety' for the purpose of Section 145 of the Code of Civil Procedure.

He submits that the petitioner can, by no stretch of imagination, be considered as a Judgment Debtor and the execution proceedings against him should be dropped.

5. Heard Advocates. The executing Court has considered all the issues raised on behalf of the petitioner for deciding the preliminary issue. It is obvious that the petitioner is raising dishonest contentions at this stage when the execution proceedings have been started. The petitioner is a Judgment Debtor as the declaration which he had executed formed part of the consent terms. The suit in which the consent terms were filed, was decreed in terms of the consent terms. Therefore, to suggest at this stage that the petitioner is not liable or that he is not a Judgment Debtor, is not correct. The executing Court has considered all the pleas taken by the petitioner and has rightly dismissed the preliminary objection raised by the petitioner/Judgment Debtor in both the execution proceedings. I see no reason to defer from the view taken. Petitions are rejected.

NISHITA MHATRE, J.

ssm.